

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JANETTE L. CLEVINGER,)	
)	
Claimant,)	IC 03-010545
v.)	
)	
LOWE’S COMPANIES, INC.,)	ORDER DENYING
)	RECONSIDERATION
Employer,)	
and)	
)	
AMERICAN HOME ASSURANCE)	Filed November 7, 2006
COMPANY,)	
)	
Surety,)	
)	
Defendants.)	
)	

On September 29, 2006, Claimant filed a Motion for Reconsideration of the Industrial Commission’s decision of September 15, 2006, in the above referenced case. Defendants filed a response on October 11, 2006 and Claimant’s reply was filed on October 18, 2006.

In the motion, Claimant asks for reconsideration regarding the medical treatment not awarded by the Commission. Specifically, Claimant requests determinations concerning Dr. Fouche’s initial evaluation which included the first MRI request in the winter of 2003, Dr. Billingslea’s ongoing care, physical therapy bills from March 24, 2004 through May 3, 2005, Dr. Ludwig’s evaluation and professional fee in August 2005, and the medical expenses incurred at Kootenai Medical Center for narcotic withdrawal from September 22, 2005 through September 25,

2005. Claimant also urges the Commission to reconsider the decision and award the fusion surgery as a natural sequel to on-going care.

Defendants aver that there is substantial and competent evidence to support the Commission's decision regarding the medical benefits sought by Claimant. Claimant is merely requesting an award of the medical treatment which the Commission was silent on in its conclusion. Further, Defendants argue that they should only be required to reimburse Claimant for the actual amount she has paid for the procedures, which is the amount remaining after payment by Claimant's private insurance carrier.

In her reply, Claimant states that Defendants' request for clarification regarding the amount to reimburse Claimant is untimely as a motion to reconsider. Additionally, Claimant argues that the Commission has consistently upheld the position that a defendant must pay the full amount billed by a medial provider.

To support her argument for compensation of further medical treatment including the fusion surgery, Claimant restates the testimony of Dr. Larson. Although Claimant disagrees with some of the Commission's findings and conclusions, the facts and arguments raised by Claimant's motion for reconsideration were considered and decided by the Commission in the original decision. The Commission's decision of September 15, 2006, in the above referenced case, is supported by substantial evidence in the record and Claimant has presented no persuasive argument to disturb the decision.

The Commission will clarify the decision and order regarding Claimant's entitlement to medical treatment. The Commission found that Claimant is entitled to the following specific treatment after February 10, 2004: the November 11, 2004 discogram, the January 2005 MRI, and

the February 9, 2005 IDET procedure as well as the medical visits associated with these procedures.

In expressly awarding the listed treatment, the Commission concluded that Claimant is not entitled to all other disputed medical treatment. Specifically, the Commission stated in its conclusion that Claimant failed to show entitlement to a lumbar fusion. Claimant is only entitled to compensation for the medical treatment listed in the decision and order.

Additionally, Defendants argue that they only need to reimburse Claimant for the actual amount she paid for the medical procedures, after contribution by her private insurance carrier. Although the request is untimely as a motion for reconsideration, the Commission will clarify Defendants' obligation. When defendants deny claimant treatment, which is later awarded by the Commission, the employer and the surety become obligated to pay the medical expenses to the worker. *St. Alphonsus Reg'l Med. Ctr. V. Edmondson*, 130 Idaho 108, 111, 937 P.2d 420, 423 (1997). The Commission awarded specific medical benefits to be paid to Claimant, and Defendants are obligated to pay to Claimant the full amount billed by provider. Defendants do not receive a bargain from denying Claimant further treatment and allowing her private insurance to pick up the expense.

Based upon the foregoing reasons, Claimant's Motion for Reconsideration is DENIED.

IT IS SO ORDERED.

DATED this 7th day of November, 2006.

INDUSTRIAL COMMISSION

/s/ Thomas E. Limbaugh, Chairman

/s/

James F. Kile, Commissioner

_____/s/_____
R. D. Maynard, Commissioner

ATTEST:

_____/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on 7th day of November, 2006, a true and correct copy of the foregoing ORDER DENYING RECONSIDERATION was served by regular United States Mail upon each of the following:

RICHARD WHITEHEAD
P.O. Box 1319
Coeur d'Alene, ID 83816-1319

THOMAS MUNSON
P.O. Box 199
Boise, ID 83701

_____/s/_____